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C O N F I D E N T I A L SECTION 01 OF 02 BANGKOK 000972

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SUBJECT: (WE'VE GOT THOSE) PARTY DISSOLUTION,
CONSTITUTIONAL AMENDMENT BLUES

REF: 07 BANGKOK 5041 (ROUND-UP: ELECTION LAWS)

Classified By: Deputy Chief of Mission James F. Entwistle, reason 1.4 (b) and (d).

¶1. (C) SUMMARY: The parties in the governing coalition are proposing constitutional amendments to try to avoid the dissolution of their parties by the Constitutional Court. Although there is little love for the 2007 Constitution, some anti-Thaksin elements are seeking to block changes that would help parties accused of election fraud escape the proscribed penalty. This process is likely to dominate the political landscape for the next few months, although the public would prefer the government concentrate on economic issues. END SUMMARY.

¶2. (C) Three months after the election for the lower house of parliament, the election fraud cases are still grinding through an increasingly controversial adjudication process. Three parties in the governing coalition -- most importantly, the People's Power Party (PPP) -- face the possibility of dissolution.

¶3. (C) In early March, the Election Commission (ECT) reviewed the cases against Chart Thai and Matchima parties. In both cases, members of the party executive leadership had been issued red cards for serious election fraud, and disqualified from holding office for one year. Having issued the red card, the ECT was then required to rule on whether cases should be referred to the Constitutional Court to consider whether the parties should be dissolved in accordance with the Election Law and article 237 of the 2007 Constitution. The parties breathed a sigh of relief in mid-March, when word leaked out that the subcommittee set up to review the case would recommend against dissolution, finding in both cases that the fraud had been carried out by the candidate alone for his personal advantage, and that the parties had not colluded in the acts. An ECT official told us at that time that the general view at the ECT was that party dissolution was a very serious measure not to be applied lightly, and that staff there generally supported the subcommittee's assessment.

¶4. (C) The parties' relief was short-lived, however. ECT Commissioner Sumeth said that the ECT would refer the case to legal specialists to review, as the ECT subcommittee might not have fully taken into account the ramifications of the 2007 election laws. He explained that the law appeared to give the ECT no real latitude: if an executive member of a party was found to have committed election fraud, then the ECT was supposed to submit the case to the Constitutional Court, according to Sumeth. On March 20, this legal

subcommittee decided by a vote of six to one that the law required the ECT to submit the Chart Thai and Matchima dissolution cases to the Constitutional Court. The ECT has not yet made a final determination in these cases, but is expected to decide within the next two weeks.

15. (C) While the ECT statements predictably provoked an outcry from Chart Thai and Matchima, the more important response was from the People's Power Party -- with 233 seats, by far the largest party in the Parliament, and the real power in the governing coalition. PPP executive member and (now suspended) House speaker Yongyuth Tiyapairat, a close associate of former PM Thaksin, has been accused of serious vote fraud by the ECT, and the Supreme Court will shortly begin to hear the case against him. If the Supreme Court concurs with the ECT recommendation for a red card, the ECT will have to determine whether to submit a PPP dissolution case to the Constitutional Court as well. The legal opinion delivered this week on the Chart Thai and Matchima cases, therefore, does not bode well for PPP. (Note: while we agree that the law gives the ECT little latitude on the submission of the case to the Constitutional Court, it is not at all a foregone conclusion how the Court will rule. One of the drafters of the very tough fraud provisions told us last year that he did not believe many parties would be dissolved because of this law given that the parties would have the benefit of the presumption of innocence in any trial, as well as the ability to pay for better lawyers than the government side would have (reftel). End note.)

16. (C) Prime Minister Samak (leader of PPP) reacted with outrage to the possibility of the party facing dissolution. He returned to his previous tendency to mutter darkly about an "invisible hand" seeking to destroy his party and with it,

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Thai democracy. The PPP launched a campaign to amend article 237 of the Constitution (which includes the dissolution procedures), along with the relevant election laws. In response to criticisms that the party was clearly acting out of narrow self-interest to avoid dissolution, the PPP announced that it would propose amendments to several other articles of the Constitution, but so far has not spoken with one voice about which articles. Some proposals include amending article 309, which provides amnesty for the coup makers and for officials who undertook actions under the junta's authority, such as the corruption investigations against Thaksin. PM Samak proposed in his Sunday morning TV show on March 23 that the whole Constitution be reviewed and amended, using the 1997 Constitution as a basis.

17. (C) Predictably, a range of anti-Thaksin voices were raised in collective outcry against the PPP proposal. While there has been broad agreement that the 2007 Constitution had flaws and would need to be amended, there is much less agreement on which articles need to be fixed. The battle lines on this issue are just being drawn, and it may be a messy business. Many who hated Thaksin also loved the 1997 Constitution and would like to make the current Charter more like the previous one.

18. (C) The issue of retroactivity will also be tricky. Already, many opponents of the current government are pointing out that, whatever amendments are made, they should not be retroactive -- parties that competed in the December elections implicitly accepted the terms of the bargain, which included possible party dissolution for those who cheated. Some are also calling for a referendum on any constitutional changes, as the 2007 Constitution was adopted by popular vote. In the end, the governing coalition probably has the votes to push through amendments. They need 316 votes - a majority of the combined House (480 seats) and Senate (150 seats); the coalition has 315 already, a solid base even if there are some defections, and many senators will likely support amendments. Opening up the amendment process, however, may put strains on the coalition. On the issue of

retroactivity, the key question for the parties at risk, the Constitutional Court may also have something to say.

COMMENT

19. (C) As noted before, the December election did not resolve the underlying conflicts in Thai society. Over the next few months, we are likely to see the next act in this protracted political drama. A weary and worried public would prefer the government focus on economic issues, and appears to have little enthusiasm for the prospect of more party dissolutions. The legal machinery is likely to grind on without much regard for popular sentiment, however, unless the politicians figure out a way to end the war of attrition between Thaksin supporters and opponents.

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